

Date: November 24, 2014

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Joel V. Reitzer, Jr., Director, General Services Department

Subject: Approval of Landlord Certificate by the City of Durham for the tenant, Shaner SPE Associates Limited Partnership

Executive Summary

The City and County jointly own real property at the Durham Convention Center for which Shaner SPE Associates Limited Partnership ("Shaner SPE") is tenant under the air space lease for the hotel premises known as the Durham Marriott City Center. Shaner SPE has requested that the City and County approve the attached landlord certificate, thereby enabling Shaner SPE, the owner of the downtown Marriott City Center, to refinance.

As part of the refinancing, Shaner SPE requested that the Owners execute a landlord certificate. The original document as presented was not acceptable to Owners. The attached document, after review and negotiation, is acceptable to the City Attorney's Office and the City Manager.

Approval of the landlord certificate will enable Shaner SPE to secure a mortgage loan in the amount of \$77,090,000.00, as secured by a leasehold deed of trust. It also provides notice to the City and County, as owners of the Convention Center, that upon closing of the loans, Shaner SPE shall assign its interest in the Air Lease and associated agreements to a new entity entitled, "Shaner Durham LLC ("Shaner Durham"), a wholly owned subsidiary of Shaner SPE.

Approval by both the City and County is required. This item is slated to be presented at the Board of County Commissioners for approval on December 8, 2014.

Recommendation

The Department of General Services recommends that the City Council:

Authorize the City Manager to execute the Landlord Certificate as requested by the tenant, Shaner SPE Associates Limited Partnership.

Background

On October 9 1987, City and County of Durham entered into a lease contract with Durham Hotel Company for the premises known as the Civic Center Hotel (the Air Lease). On or about July 9, 1996 Durham Hotel Company, with the consent of the Owners, assigned its interest in the Air Lease to Shaner Hotel Group Properties Two Limited Partnership. Shaner later assigned its interest as "Tenant" to a new entity, Shaner SPE Associates Limited Partnership. The first modification of lease was entered into on or about May 19, 1989 to revise the legal description of the property description for hotel air space. The second modification of lease was entered into on or about July 26, 1997, and added definitions to the lease, added assignment provisions and increased the rent paid by the hotel. Since assignment of the lease to Shaner, Shaner served as both hotel and convention center manager through December 31, 2010. Beginning January, 2011 the Durham Convention Center management contract was awarded to Global Spectrum, LP, while the hotel Air Lease has remained with Shaner.

About two years ago, Shaner filed a lawsuit alleging the hotel owner was entitled to use various DCC spaces that they occupied as manager of the DCC, although Shaner no longer manages the DCC. Settlement of the lawsuit resulted in completion and approval of The Third Modification of the Air Lease (Third Modification) which addressed previously disputed areas, and identified spaces to be used by the hotel owner as Tenant. This modification was approved by the City Council on October 9, 2014.

Issues/Analysis

Shaner SPE, as Tenant under the Air Lease, has requested that the City and County of Durham, as Owners, execute the landlord certificate to allow Shaner SPE to proceed with its loan and refinance. This transaction is customary and normal course of business request in order to permit Shaner SPE to proceed with its loan and is required by Shaner's lenders. The landlord certificate has been the subject of extensive negotiation by the City Attorney's Office, and has been substantially changed from what was originally proposed.

Alternatives

Council may choose not to authorize the Manager to execute this agreement, but this would not be consistent with duties of owners/landlord.

Financial Impact

None

SDBE Summary

The Equal Business Opportunity Ordinance is not applicable to this agreement.

Attachment

Landlord Certificate